UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTIETH REGION

Kenosha, WI

REM WISCONSIN II, INC.

Employer

and **Case 30-RC-6626**

WISCONSIN TEAMSTERS' JOINT COUNCIL NO. 39, AND ITS AFFILIATED LOCAL TEAMSTERS, CHAUFFEURS, AND HELPERS LOCAL UNION NO. 43[1]

Petitioner

DECISION AND DIRECTION OF ELECTION

This is my determination as to the appropriateness of the unit sought by the Petitioner, who seeks to represent all full-time and part-time coordinators and PRNs employed at the Employer's Kenosha, Wisconsin facility; excluding all confidential employees, managerial employees, guards and supervisors as defined by the National Labor Relations Act.[2] The Employer does not dispute the employee classifications included and excluded in the proposed unit, but contends a single-facility unit is not appropriate, and that the only appropriate unit is one covering the four additional residential facilities operated from its Hales Corners, Wisconsin business office. As discussed below, I find that the Employer has not rebutted the single-facility

[1]The name of the Petitioner appears as amended at hearing.
[2] The record indicates "coordinators" and "PRNs" do not differ in duties or responsibilities. The classifications differentiate between employees with regularly scheduled hours and pool employees that fill open shifts. The distinction is not material to my determination and "coordinators" as used in this Decision refers to both positions.

unit presumption, and that the petitioned-for unit in Kenosha is an appropriate unit.

Petitioner filed a petition under Section 9(c) of the Act, as amended. Pursuant to the provisions of Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board (Board). A hearing was held before a hearing officer of the Board, and timely briefs from the Employer and Petitioner have been received and duly considered.[3]

I. BACKGROUND

The Employer provides residential facilities and services to individuals with developmental or other disabilities. Currently the Employer operates five residential facilities, either single family homes or small apartment buildings, in southeastern Wisconsin. The clients at these homes receive services, including personal care assistance, medical monitoring, vocational training and recreation, from the Employer's 24 hour on-site staff, referred to as coordinators. The Employer is compensated for its work by governmental entities that contract for the Employer's services.

The coordinators at each location provide a variety of services based on client need. These include in-home functions such as meal preparation, dispensing medications, cleaning the residence and mobility assistance for clients that utilize wheelchairs. Coordinators do not administer medical care such as injections or intubations, the administration of medications is

[3] Upon the entire record I find the following: 1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed. 2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction. The parties stipulated, and I find, that the Employer, a Wisconsin Corporation with an office and place of business in Kenosha, Wisconsin, is engaged in the business of operating a supportive home care facility. During the past calendar year, a representative period, the Employer received gross revenues in excess of $100,000 from its business operations. Also, during this same period the Employer purchased and received goods, materials or services valued in excess of $5,000 directly from suppliers located outside the State of Wisconsin. 3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act. 4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(a) and Section 2(6) and (7) of the Act.

largely limited to doctor proscribed oral medications. Coordinators may also accompany clients outside the residence, performing tasks such as taking clients to and from medical appointments, outside employment or school. In addition to these duties directly involving clients, coordinators are also responsible for administrative functions such as completing paperwork at the end of their shift. The qualifications, training, and responsibilities of coordinators are the same at each of the Employer's facilities.

Coordinators report to a site supervisor, either a home coordinator or assistant home coordinator. The home coordinator reports to a program coordinator, and the program coordinator reports to Regional Program Director Cynthia Bergs. Bergs administers the Employer's five southeastern Wisconsin facilities. Four of these homes are in Milwaukee County, located at South 46th Street, College Avenue, Nicholson Avenue and Brown Deer, and one is located in Kenosha County. The Employer recently closed a second facility in Kenosha County, located in Pleasant Prairie, Wisconsin. The Kenosha facility is between 30 and 40 miles from the various Milwaukee County locations. The residents of the Milwaukee County facilities are Milwaukee County residents and the Employer has a contract with Milwaukee County for their care. Similarly, the residents of the Kenosha County facility are Kenosha County residents and the Employer has a contract with Kenosha County to provide the services described above.

The Kenosha facility opened in April of 2004 and currently employs approximately 21 coordinators. The facility has the capacity to accommodate eight residents, and currently houses seven. The program coordinator responsible for Kenosha, and previously the Pleasant Prairie facility, is Mickey McCoy. Danny Waites is the Kenosha on-site home coordinator, and Rosemary Hobson is the assistant home coordinator.[4]

[4] The parties stipulated at hearing that McCoy, Waites and Hobson are supervisors. Based upon the record evidence

The Employer maintains a central office in Hales Corners, Wisconsin, also in Milwaukee County. This facility is a business office, not a residential care facility. Bergs, the two program coordinators for the Employer's Milwaukee County facilities, and the Employer's office manager work at this location. The administrative functions associated with these positions, including payroll, budget development, and recordkeeping are handled at this office. McCoy does not have an office at Hales Corners, he instead works out of the Kenosha facility.

II. ANALYSIS

The only issue regarding Petitioner's proposed unit is whether the unit sought is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. The Board's procedure for determining an appropriate unit is to examine the petitioned-for unit, and, if that unit is appropriate, end the inquiry. *Bartlett Collins Co.*, 334 NLRB 484 (2001). The unit needs only to be an appropriate unit, and need not be the most appropriate unit. *Morand Bros. Beverage Co.*, 91 NLRB 409, 419 (1950), *enfd. on other grounds* 190 F.2d 576 (7th Cir. 1951).

It is well-established that a single-facility unit is presumptively appropriate.[5] *Trane*, 339 NLRB 866 (2003); *Budget Rent a Car Systems*, 337 NLRB 884 (2002). This presumption applies even where a larger, more comprehensive unit might also be found to be appropriate. *Dixie Belle Mills, Inc.*, 139 NLRB 629, 631 (1962). The presumption also applies in the health

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that they participate in employee evaluation and discipline I find McCoy, Waites and Hobson supervisors within the meaning of Section 2(11) of the Act, consistent with this stipulation.

[5] The burden is on the party opposing the single-facility unit to present evidence overcoming the presumption. *RB Associates, Inc.*, 324 NLRB 874 (1997).

care industry, although Congress has discouraged proliferation of bargaining units where such a proliferation may risk the quality of patient care.[6] *Manor Healthcare Corp*., 285 NLRB 224 (1987). A single-facility unit will not be found appropriate where the employees of the one facility at issue have become so functionally integrated with another facility that the petitioned-for single-plant unit has lost its separate identity. *J&L Plate, Inc*., 310 NLRB 429 (1993).

To determine whether the presumption has been rebutted under the particular circumstances of the case the Board analyzes the following elements: (1) amount of local autonomy, including whether the employer exercises central control over daily operations and labor relations; (2) the similarity of skills, functions and working conditions of employees; (3) the amount of employee interchange; (4) geographic separation; and (5) bargaining history, if any.[7] *New Britain Transportation Co.*, 330 NLRB 397 (1999); *Esco Corp.*, 298 NLRB 837 (1990).

1. Amount of local autonomy, including whether the Employer exercises central control over daily operations and labor relations

The Board has found that an employer's use of centralized labor relations personnel and policies from a principal office weighs in favor of finding the single-plant unit integrated with other facilities. *R&D Trucking, Inc.*, 327 NLRB 531 (1999); *Budget Rent A Car,* above. However, the existence of centralized administration of matters such as accounting, recordkeeping, payroll, and wages and benefits, and centralized control over such matters as

[6] I find it is not necessary, and the record is not sufficient, to reach the issue of whether the Employer's facilities are properly considered health care institutions. Although I do not make a determination on this question this Decision assumes the facilities are health care providers.

[7] In the present case it is not disputed that the qualifications, training, and responsibilities of coordinators are the same at each of the Employer's facilities. This has some probative value in demonstrating integration. The parties also agree no bargaining history exists, and this element can be disregarded. The parties dispute the significance of the remaining three factors.

formal discipline, new-hire training, and safety training, does not refute the presumption alone if the evidence demonstrates sufficient local autonomy. *New Britain Transportation Co*., above. Sufficient local autonomy can be shown where front line supervisors have discretion to address employee problems, grant time off requests, issue verbal discipline, or participate in the hiring process. *Rental Uniform Service Inc*., 330 NLRB 334, 335 (1999); *Bowie Hall Trucking*, 290 NLRB 41, 43 (1988).

In the present case the Employer has presented evidence of central control over some labor relations issues, but has not demonstrated a lack of local autonomy sufficient to overcome the single-facility presumption. The facilities at issue are residential facilities, and the record reflects that the day to day operation of each facility follows the routine of the clients. Coordinators assist in preparing the client for the day, including personal care and preparing a meal, may take the client to an activity, and then again assist in personal care and meal preparation in the evening. The record contains no evidence that the administrative staff at the Hales Corners business office direct or participate in this daily function.

The record contains a great deal of evidence regarding what on-site home supervisors *lack* the authority to do. Bergs testified at length regarding on-site supervisors' inability to make certain decisions, such as alter a coordinator's wage, exempt a coordinator from training, modify the mechanism the Employer uses to conduct a background check, modify the Employer's smoking policy and so forth. It is not necessary that an on-site supervisor retain extensive or exclusive discretion over all terms and conditions of employment to find a facility has sufficient local autonomy. As such, this testimony is not persuasive.

The record does contain persuasive evidence that the three supervisors at the Kenosha facility, McCoy, Waites and Hobson, have discretion to address the terms and conditions of

coordinators' employment. The record demonstrates these supervisors, at a minimum, start the disciplinary process. The record contains discipline issued and documented by Waites and McCoy. Employees are obligated to follow rules established by Bergs, violating a rule will lead to discipline by a local supervisor. This does not mean Bergs is issuing the discipline, or that local supervisors are operating at her direction. The record shows Waites and McCoy are the decision makers utilizing independent judgment, and this independent judgment demonstrates their local autonomy. Similarly, if discipline is recorded at the Hales Corners office, or Bergs is consulted after the fact, this does not demonstrate a lack of local autonomy.

The Kenosha supervisors are also involved in the employee evaluation process. The record contains evaluation forms completed and signed by McCoy. The same evidence also shows written contributions on evaluations by Waites and Hobson. In addition to discipline and evaluation the Kenosha supervisors also have authority regarding scheduling. The record indicates when an employee at the Kenosha facility requests time off the request is made to either Waites or Hobson, and if it is approved McCoy must also sign off on the request. Again, because the request is recorded at the Hales Corners office by the office manager does not diminish the independent judgment utilized at the local level in approving or denying a request.

Finally, as a program coordinator McCoy demonstrates a great deal of autonomy in hiring for the Kenosha facility. Bergs testified McCoy has conducted the application review, employment pre-screening, reference check, and interview portions of the hiring process. Bergs also testified that a majority of interviews for Kenosha applicants are actually conducted at the Kenosha facility. Again, while Bergs may have final approval on hires this does not diminish the significant local autonomy demonstrated by McCoy in hiring employees for the Kenosha facility. The evidence of local autonomy in discipline, evaluations, scheduling and hiring,

combined with the lack of evidence of any daily control by Bergs or other Employer representatives, substantially supports the single-facility presumption.[8]

2. Amount of Employee Interchange

Employee interchange is a question of meaningful contact between employees, their interaction and coordination. In the present case, there is no demonstrated regular interchange between the petitioned-for employees and employees at the other facilities. Most importantly, on a day-to-day basis, there is no evidence the petitioned-for employees have any interaction with employees from the other four facilities. As noted earlier these are residential facilities, and the day to day operation of each facility follows the routine of the clients. This involves the daily cycle of assisting clients in preparing for the day and completing the day's activities. The record contains no evidence that the coordinators' role in this routine in any way brings them in contact with coordinators from other facilities, or involves coordinating in any way with other facilities.

Interchange also does not arise from the temporary rotation of coordinators. The record demonstrates the Kenosha facility is staffed by a distinct group of employees. No coordinators from Milwaukee County facilities have worked at the Kenosha facility, and no Kenosha employees have worked at any of the Milwaukee County facilities, since the Kenosha facility opened. There is also no evidence of permanent employee interchange. The only evidence of employee transfers are the 4 employees who transferred to the Kenosha facility when the Pleasant Prairie facility, also located in Kenosha County, closed. There is no evidence of transfers

[8] Bergs testified when she does visit a facility her purpose is quality assurance, including confirming compliance with appropriate licensing, codes of conduct and other requirements. This is a review function, not primary instruction or direction, and I do not find this demonstrates any control over daily operations as contemplated by the case law.

between Kenosha County facilities and facilities located in Milwaukee County.[9]

Although the Employer's internal job posting procedure would allow a coordinator in Kenosha to apply for a Milwaukee position or vice versa there is no evidence in the record this has actually happened. Additionally, the record indicates that Kenosha employees are not required to travel to Milwaukee for training, but that the training takes place in Kenosha. From the evidence in the record it appears the Kenosha facility is a distinct unit, whose employees have little or no interaction with coordinators at other facilities on a regular basis. This finding also substantially supports the single-facility presumption.

3. Geographic Separation

All of the facilities in question are in southeastern Wisconsin, but while four of the five facilities are located in the same county, the Kenosha facility remains distant, separated by three times the distance between any other facility. Kenosha County does not even border Milwaukee County, the two are separated by Racine County. The geographic separation in the instant case is magnified by the nature of employees' work, which is largely self-contained to the facility where they work. I find the geographic distance between the Kenosha facility and the various Milwaukee County facilities accentuates the lack of interchange in this case.

III. CONCLUSION

Based on my consideration of the elements described above it is my determination that the Employer has not rebutted the single-facility unit presumption, and that the petitioned-for

[9] The lack of employee interchange distinguishes the instant case from *St. Luke's Health System, Inc.*, 340 NLRB No. 139 (2003), cited by the Employer. Although analogous in some regards, *St. Luke's* relies in part on the frequent temporary and permanent transfer of employees. In *St. Luke's* approximately 15 to 20 percent of employees within a job classification were temporarily assigned to other facilities, and almost 30 employees were permanently transferred by utilizing the internal posting system. *St. Luke's*, slip op. at 3. Although the employee pool is smaller in the instant case there is no evidence of *any* temporary or permanent transfers involving this Employer.

unit in Kenosha is an appropriate unit. In making my determination, I do not rely on one factor, but have considered both the local autonomy of the supervisory staff at the Kenosha facility to affect the terms and conditions of employment of the petitioned-for employees, and the lack of employee interchange between facilities. Additionally I rely on the geographic distance between facilities as supporting my determination regarding employee interchange. I do not discount that some evidence in favor of a multi-facility unit exists, but it is not sufficient to overcome the relevant presumption in this determination. Accordingly I direct the election in the following appropriate unit:

> All full-time and part-time coordinators and PRNs employed by the Employer at the Employer's Kenosha, Wisconsin facility; excluding all confidential employees, managerial employees, guards and supervisors as defined in the National Labor Relations Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period,

employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Wisconsin Teamsters' Joint Council No. 39, and its affiliated local Teamsters, Chauffeurs, and Helpers Local Union No. 43 .

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to the list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company,* 384 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer shall file with the undersigned, **two** copies of an election eligibility list, containing the **full** names (including first and last names) and addresses of all the eligible voters, and upon receipt, the undersigned shall make the list available to all parties to the election. To speed preliminary checking and the voting process itself, it is requested that the names be alphabetized. **In order to be timely filed, such list must be received in the Regional Office, Suite 700, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203 on or before December 30, 2005.** No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, DC 20570. **This request must be received by the Board in Washington by January 6, 2006.**

OTHER ELECTRONIC FILINGS

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlrb.gov.

Signed at Milwaukee, Wisconsin on December 23, 2005.

/s/Irving E. Gottschalk

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